

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CRIMINAL JUSTICE ACT PLAN

Adopted by the Court July 8, 2002

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CRIMINAL JUSTICE ACT PLAN

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, as amended, [hereinafter referred to as CJA], and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (CJA Guidelines), the Judges of the United States District Court for the Eastern District of Washington have adopted the following amended Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of a crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.

2. The further objective of this Plan is to particularize the requirements of the CJA, the Anti-Drug Abuse Act of 1988 (codified in part at 21 U.S.C. § 848(q)), and the CJA Guidelines in a way that meets the needs of this district.

B. Compliance.

1. The Court, its Clerk, the Community Defender Organization and private attorneys appointed under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. The Clerk of Court shall provide each private attorney with a current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Clerk shall maintain a current copy of the CJA Guidelines for members of the CJA Panel and shall make known to such attorneys its availability.

III. DEFINITIONS

- A. "Representation" includes counsel, investigative, expert and other services.

- B. "Appointed attorney" means counsel ordered by the Court to represent indigent persons in this district.

IV. PROVISION OF REPRESENTATION

A. Circumstance.

1. Mandatory. Representation shall be provided for any financially eligible person who:

- a. is charged with a felony or a Class A misdemeanor;
- b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
- c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
- d. is under arrest, when such representation is required by law;
- e. is entitled to appointment of counsel in parole proceedings;
- f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
- g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;

- h. is in custody as a material witness;
- i. is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or 2255;
- j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;
- k. is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution; or
- l. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary. Whenever a judicial officer determines that the interests of justice so require, representation may be provided for any financially eligible person who:

- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence of confinement is authorized;
- b. is seeking relief, other than to set aside or vacate a death sentence under 28 U.S.C. § 2241, 2254, or 2255;
- c. is charged with civil or criminal contempt who faces loss of liberty;
- d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony and there is reason to believe, either prior to or during testimony,

that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;

- e. is proposed by the United States attorney for processing under a pretrial diversion program;
- f. is held for international extradition under chapter 209 of title 18, United States Code.

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA.

B. When Counsel Shall Be Provided.

Counsel shall be provided to eligible persons when feasible after they are taken into custody, when they appear before a judicial officer, when they are formally charged or notified of charges if formal charges are sealed, or when a judicial officer otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number of Counsel.

More than one attorney may be appointed in any case determined by the Court to be extremely difficult.

D. Eligibility for Representation.

1. Fact finding. The determination of eligibility for representation under the CJA is a judicial

function to be performed by a judicial officer after making appropriate inquiries concerning the person's financial condition. A person is "financially unable to obtain counsel" within the meaning of subsection (b) of the Act if his or her net financial resources and income are insufficient to enable him or her to obtain qualified counsel. In determining whether such insufficiency exists, consideration should be given to (a) cost of providing the person and his or her dependants with the necessities of life, and (b) the cost of the defendant's bail bond if financial conditions are imposed, or the amount of the cash deposit defendant is required to make to secure his or her release on bond.

2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

V. COMMUNITY DEFENDER ORGANIZATION

- A. Establishment. The United States District Court for the Eastern District of Washington has designated a Community Defender Organization to provide representation in said district pursuant to 18 U.S.C.

§ 3006A(g)(2)(B), and will continue under this Plan. The Community Defender Organization is authorized to provide representation throughout the Eastern District of Washington and shall continue to be governed by its' Board of Directors. A copy of the Bylaws of the Community Defender Organization for the Eastern District of Washington is incorporated as part of this CJA Plan and is attached hereto.

VI. CRIMINAL JUSTICE ACT PANEL

- A. Establishment of CJA Panel. The existing, previously established panel of attorneys (CJA Panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized. The Court hereby delegates to the magistrate judges the management of the CJA Panel.
- B. Organization. The Plan for the composition, administration and management of the panel of private attorneys under the CJA is found in the Appendix at sections I, II and III of this CJA Plan, attached hereto.
- C. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" shall usually be defined as approximately 25% of the appointments under the CJA annually throughout the district.

VII. REPRESENTATION IN FEDERAL CAPITAL PROSECUTIONS AND IN
FEDERAL CAPITAL HABEAS CORPUS PROCEEDINGS

A. Appointment of Counsel in Capital Cases.

1. Number of Counsel.

a. Federal Capital Prosecutions. Pursuant to 18 U.S.C. § 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom shall be learned in the law applicable to capital cases. Pursuant to 21 U.S.C. § 848(q)(4), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.

b. Habeas Corpus Proceedings. Pursuant to 21 U.S.C. § 848(q)(4), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 or 2255, is entitled to appointment of one or more qualified attorneys. Due to the complex, demanding and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.

The Court will appoint the Capital Habeas Unit of Federal Defenders of Eastern Washington and

Idaho (Capital Habeas Unit) as lead counsel to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under 28 U.S.C. § 2254, but may, when deemed appropriate by the court, appoint as lead counsel, a qualified attorney who is not a member of the Capital Habeas Unit. Upon request of the Capital Habeas Unit, the Court also may appoint an attorney from the Capital Habeas Panel, or other qualified attorney, as second counsel. In the event of conflicts, existing workload, or other special factors, if the Capital Habeas Unit is unable to provide representation it shall recommend to the Court that attorneys from the CJA Capital Habeas Panel be appointed pursuant to 21 U.S.C. 848(q), 18 U.S.C. § 3005 or other applicable provisions of law.

- c. Administration of CJA Capital Habeas Panel. The Capital Habeas Unit will prepare a list of private attorneys qualified and willing to accept appointments in death penalty habeas cases. The list of attorneys, along with a summary of their qualifications, will then be forwarded to the Court for final approval and placement of the private attorneys in a first or second chair position for subsequent appointment. Typically, death penalty habeas defendants requesting appointment of counsel will initially be assigned by the Court to the

Capital Habeas Unit. If the Capital Habeas Unit determines that the organization cannot accept the appointment because of a conflict of interest, caseload already assigned to staff attorneys, or for any other valid reason, a first and second chair attorney from the Panel shall be recommended by the Capital Habeas Unit for appointment. The Court can either accept the recommendation or select other attorneys from the list.

2. Procedures for Appointment in Federal Capital Prosecutions.

In assigning counsel to provide representation in federal capital prosecutions, the Court will consider the recommendation of the Community Defender Organization. The recommendation of the Community Defender Organization shall be made through its Executive Director. The Community Defender Organization shall recommend counsel who meet the requirements of 18 U.S.C. § 3005 and/or 21 U.S.C. § 848(q).

3. Attorney Qualification Requirements.

- a. Appointment of Counsel Prior to Judgment.
Pursuant to 21 U.S.C. § 848(q)(5), at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than five

years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court. Pursuant to section 18 U.S.C. § 3005, at least one of the attorneys must be knowledgeable in the law applicable to capital cases.

b. Appointment of Counsel After Judgment.

Pursuant to 21 U.S.C. § 848(q)(6), at least one of the attorneys appointed must have been admitted to practice in the Ninth Circuit Court of Appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in the court.

c. Attorney Qualification Waiver.

Pursuant to 21 U.S.C. § 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 21 U.S.C. § 848(q)(5) or (q)(6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

4. Submission of Capital Habeas CJA Vouchers

CJA attorneys will submit the original of all partial and final CJA vouchers directly to the

Court with a copy being provided to the Capital Habeas Unit. The Capital Habeas Unit will conduct an initial review of all partial and final CJA vouchers and investigative expenses by attorneys within ten days of receiving the voucher and submit a recommendation to the Court regarding approval of said vouchers. The Court retains final approval authority over all vouchers and requests for investigative services.

VIII. DUTIES OF APPOINTED COUNSEL

- A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered as if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including, but not limited to, the provisions of the American Bar Association's Model Code of Professional Conduct, the Eastern District of Washington's Local Rules and the Washington State Bar Association's Rules of Professional Conduct. Counsel shall promptly notify the Court, in writing, in the event any action is taken by any court or bar affecting the standing of the attorney to practice before such court or bar.
- C. No Receipt of Other Payment. Appointed counsel may not require, request or accept any payment or promise

of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the Court.

D. Continuing Representation. Appointed trial counsel has a continuing obligation to represent the defendant through appeal. The Ninth Circuit Court of Appeals' Plan (Ninth Circuit Plan) for compliance with the CJA applies to appeals in each of the categories listed in 18 U.S.C. § 3006A(a). Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari, is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order. The existing, previously established appellate panel of attorneys (CJA Appellate Panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized. The Court delegates to the magistrate judges the management of the Appellate CJA Panel.

E. Record Keeping. Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, and support staff, as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the final voucher for an appointment.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

A. Presentation of Accused for Appointment of Counsel.

As soon as practicable following the arrest of an individual in connection with a federal criminal charge or the appearance of the accused for an initial appearance, whichever occurs first, the Community Defender shall be responsible for asking the accused whether he or she is financially able to secure representation, and shall, in such cases in which the person so indicates, assist the person in completing a financial affidavit (CJA 23) for presentation to the Court. Law enforcement, prosecutors or court personnel shall be responsible for notifying the Community Defender Organization of the arrest of an individual in connection with a federal criminal charge and/or the appearance of the accused for an initial appearance.

B. Pretrial Services Interview. When practical, financially eligible defendants will be furnished appointed counsel prior to being interviewed by a pretrial services officer. If counsel has not been appointed and the defendant so requests, the pretrial services officer will obtain the necessary financial information from the defendant during the pretrial interview. If the interview is conducted in person, the pretrial services officer will have the defendant execute a financial affidavit (CJA Form 23) and

submit it to the Clerk of Court. When counsel has been appointed, the pretrial services officer will arrange to interview the defendant with counsel present as schedules permit.

C. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment or the filing of a criminal information, the United States Attorney shall immediately mail or personally deliver a copy of the document to the attorney of record. If the defendant is without counsel, a copy shall be provided to the defendant at the address shown on the defendant's Advice of Penalties and Sanctions, A.O. 199C Form or serve the defendant at the jail in which the defendant is incarcerated.

D. Petition to Modify or Revoke Supervised Release or Probation. Upon the filing of a petition to modify or revoke supervised release or probation, the United States probation officer shall immediately mail or personally deliver a copy of the petition to the attorney of record. If the defendant is without counsel, a copy shall be provided to the defendant at the current address maintained in the probation officer's file or serve upon the defendant at the jail in which the defendant is incarcerated.

X. MISCELLANEOUS

A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United

States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.

- B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted to the Clerk of Court. That office shall review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, shall forward the claim form for the consideration of the appropriate judicial officer. The Court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.
- C. Disclosure of Fees. The amounts paid to appointed counsel, for representation in any case, shall be made available to the public, unless for good cause, counsel petitions the Court for non-disclosure.
- D. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this court.

XI. EFFECTIVE DATE

This Plan is hereby adopted this 8th day of July,

2002, and shall take effect when approved by the Judicial Council of the Ninth Circuit.

Fred Van Sickle
Chief United States District Judge

Justin L. Quackenbush
Senior United States District Judge

Alan A. McDonald
Senior United States District Judge

Wm. Fremming Nielsen
United States District Judge

Robert H. Whaley
United States District Judge

Edward F. Shea
United States District Judge

Appendix I

PLAN FOR THE
COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE PANEL OF
PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA PANEL

1. Approval. The Court shall establish a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the panel pursuant to section VI paragraph B of this Plan. Members of the CJA Panel shall serve at the pleasure of the Court.
2. Size. The Court shall fix, periodically, the size of the CJA Panel. The Panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.
3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedures, the Federal Rules of Evidence, the Sentencing Guidelines, the Bail Reform Act and the local criminal procedures

for the Eastern District of Washington. Qualified attorneys shall have practiced law for at least three years, and shall be residents of this state.

Subsection (b) of the Act provides, in part, that:

"Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan."

However, when the district judge presiding over the case, or the chief judge if a district judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the CJA panel, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA panel pro hac vice and appointed to represent the defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify him or her for admission to the district's CJA panel in the ordinary course of

panel selection. Finally, the Court may require an attorney seeking pro hac vice appointment to the CJA Panel to accept two other appointments.

4. Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Clerk of Court. Completed applications shall be submitted to the Clerk of Court who will transmit the applications to the designated magistrate judge for consideration.

II. ADMINISTRATION

A. SELECTION FOR APPOINTMENT

1. Maintenance of List and Distribution of Appointments. The designated magistrate judge shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers. The designated magistrate judge shall furnish a copy of this list to each judge and magistrate judge and to the Clerk of Court. The designated magistrate judge also shall maintain a record of appointments of private counsel and any statistical data that reflect the proration of appointments, which data will be made available upon request at the office of the Clerk of Court.
2. Method of selection. Appointments from the list of private attorneys should be made on a

rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This process should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each defendant.

Upon a determination of need for the appointment of counsel, the designated magistrate judge shall so appoint. If the magistrate judge decides to appoint an attorney from the panel, the magistrate judge shall determine the name and availability of the next panel member on the list who has handled, or assisted in, a case equal to, or of greater complexity than, the case for which appointment of counsel is required.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk of Court's office, the presiding judicial officer may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the presiding judicial officer shall notify the designated magistrate judge as to the name of the attorney appointed and the date of appointment.

B. INVESTIGATIVE, EXPERT AND OTHER SERVICES

Counsel (whether or not appointed under the Act) for a party who is financially unable to obtain investigative, expert or other services necessary for an adequate defense in his or her case, may request such services in an ex parte application before a judge, as provided in 18 U.S.C. § 3006A(e)(1). Upon finding that the services are necessary, and that the defendant is financially unable to obtain them, the judge shall authorize counsel to obtain the services.

Counsel may obtain, subject to later review, investigative, expert, or other services without prior authorization, pursuant to 18 U.S.C. § 3006A(e)(1). Expenditures without prior court authorization are not favored.

Counsel shall comply with all provisions regarding financial limitations and requests for services, as set forth in 18 U.S.C. § 3006A(e), and any guidelines or regulations approved by the Judicial Conference of the United States.

C. COMPENSATION - FILING OF VOUCHERS

Payment of fees and expenses to counsel appointed under this Plan, (other than to the Community Defender's Office), and payment for investigative, expert, and other services incurred, shall be made in accordance with any statutory limitations and such

rules, regulations and guidelines, as have been or may be prescribed from time to time by the Judicial Conference of the United States, and in accordance with the fiscal policies of the Administrative Office of the United States.

Claims for compensation shall be submitted, on the appropriate CJA form, to the Clerk of Court no later than forty-five days following final disposition of the case. A motion and order shall be filed with the Court requesting payment of those vouchers which are submitted later than forty-five days following final disposition of the case.

The Clerk of the Court or his designee shall review the claim for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures). Any inaccuracies shall be brought to the attention of the presiding judicial officer and a corrected copy shall be provided to counsel. Except in cases involving mathematical or technical corrections, no claim for compensation submitted for services provided under the CJA shall be reduced without affording counsel the opportunity to be heard. If the voucher is correct, the Clerk or his designee

shall forward the claim form for the consideration and appropriate action of the presiding judge or magistrate judge.

Counsel claiming compensation in excess of the statutory case limitation must submit with the voucher a detailed memorandum supporting and justifying counsel's claim that representation was provided in a complex or extended case and that the excess payment is necessary to provide fair compensation. The presiding judge, after approval of claims for compensation which are in excess of the statutory maximum, shall certify the excess amount to the Chief Judge of the Ninth Circuit Court of Appeals for approval. Payment of vouchers in excess will not be made until approved by the Chief Judge of the Ninth Circuit.

The Clerk of Court or his designee shall enter the appropriate data into the CJA automated payment system for all vouchers which have been approved for payment. The Administrative Office of the Courts will disburse payment thereafter.

III. MANAGEMENT

A. EFFECTIVE ASSISTANCE OF CJA COUNSEL

1. Processing Concerns. Any person should communicate concerns about a CJA Panel attorney

directly to the assigning magistrate judge. The magistrate judge will convey the concerns, including the identity of the person who communicated those concerns (complainant), in writing to the CJA attorney and request a written response. Depending on the seriousness and/or number of concerns, the magistrate judge at his or her discretion may terminate the process or further initiate action by forwarding the written documents from both the complainant and the CJA attorney to a review committee.

2. Review Committee. The review committee will be comprised of three (3) CJA counsel, one (1) non-voting federal defender attorney, and one (1) non-voting Assistant United States Attorney. The CJA attorney may appear before the review committee, if the attorney so requests, to address the concerns. The review committee will make any appropriate recommendation to resolve the concerns, including taking no action, ordering mentoring, training, reduced CJA assignments, referral to lawyer assistance programs, suspension from the CJA Panel, or removal from the CJA Panel.
3. Review Committee Recommendation. The review committee's recommendation shall be communicated to the CJA attorney and to the district judges,

who will instruct the assigning magistrate judge to enforce the review committee's recommendation, if the district judges deem it appropriate. The magistrate judge may seek the assistance of the federal defender's office and CJA Panel members to implement the decision.